THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.18027 & 18776 OF 2006

COMMON ORDER:

W.P.No.18027 of 2006 has been filed by one Lanka Krishna Mohan, a Form A-4 licensee under Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short "the Rules") in respect of the shop at Bhavanipuram, Vijayawada, seeking a declaration that the proceedings of the Commissioner of Prohibition and Excise dated 19.8.2006 granting permission to M/s Durga Wines, A-4 licensee at Kolanukonda village, Tadepalli Mandal to shift the licensed premises from Kolanukonda to Undavalli centre as well as the consequential order passed by the Prohibition & Excise Superintendent, Guntur, granting licence to run the shop at Undavalli centre as arbitrary and illegal.

This Court directed *Rule nisi* on 1.9.2006 and posted the matter to 11.9.2006 for counter of the respondents.

While so, three persons who are holding Form 2-B licences under the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005, to run Bar and Restaurants at Undavalli centre and Tadepalli by-pass road, filed a Revision under Section 64 of the A.P. Excise Act, 1968 (for short "the Act"), challenging the very same order dated 19.8.2006 passed by the Commissioner of Prohibition and Excise. Having entertained the Revision Petition, the Government by order dated 31.8.2006 stayed the shifting of A-4 shop from Kolanukonda to Undavalli centre until further orders and the same was communicated to the Commissioner of Prohibition and Excise by memo dated 1.9.2006.

Aggrieved by the same, the licensee of M/s Durga Wines filed W.P.No.18776 of 2006, seeking a writ of *Certiorari* to call for the records relating to the memo dated 1.9.2006 and quash the same. The three persons, holding Form 2-B licences, who filed Revision before

the State Government, are arrayed as respondents 5 to 7 in the said writ petition.

For the sake of convenience, the parties shall hereinafter be referred to as they are arrayed in W.P.No.18776 of 2006.

The facts in brief are as under:

For the excise year 2006-08, the District Collector, Guntur, being the auctioning authority, issued a notification dated 27.5.2006 for grant of licences in Form A-4 to sell Indian made Foreign Liquor and Foreign Liquor by Shop under Rule 3 of the Rules. The writ petitioner was the successful bidder in respect of Kolanukonda village of Tadepalli Mandal and, accordingly, he was granted a licence in Form A-4 on 6.7.2006 to carry on the business at the premises bearing No.3-153/B of Kolanukonda village. However, on 9.7.2006, he made an application requesting permission to shift the licensed premises from Kolanukonda to Undavalli village of Tadepalli Mandal, expressing his willingness to pay the differential licence fee, if any. Having considered the same, the Commissioner of Prohibition and Excise vide proceedings dated 19.8.2006 accepted the proposal for shifting of A-4 licence from Kolanukonda to Undavalli village by collecting the prescribed fee as per the rules. In pursuance thereof, the Prohibition & Excise Superintendent, Guntur directed the petitioner to pay the differential licence fee of Rs.3,50,000/-, apart from giving bank guarantee for a sum of Rs.7.00 lakhs on par with the licence fee of Form 2-B shops in Undavalli centre. The petitioner has complied with the same and, accordingly, the Prohibition & Excise Superintendent by proceedings dated 21.8.2006 accorded permission for shifting of the licensed premises from Kolanukonda to Undavalli centre.

The respondents 5 to 7 are admittedly holding Form 2-B licences at Undavalli centre under Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 for running Bar and Restaurants. They made a representation dated 30.7.2006 to the Commissioner of Prohibition and Excise requesting not to grant

permission for shifting of A-4 shop from Kolanukonda to Undavalli centre. Since their objections were not accepted, they filed Revision Petition under Section 64 of the Act before the Minister for Prohibition & Excise on 31.8.2006 challenging the order of the Commissioner dated 19.8.2006. The said Revision Petition was taken on file and the order dated 19.8.2006 was stayed, pursuant to which the impugned memo dated 1.9.2006 was issued.

The said memo, which is under challenge in W.P.No.18776 of 2006, may be extracted hereunder:

> " The appeal filed under Section 64 of the A.P. Excise Act by Sri D. Goverdhan Reddy, licensee of M/s Sri Sai Restaurant & Bar, Undavalli centre, Tadepalli Mandal, Guntur District and two others is pending before the Government. In view of the pending appeal petition, the shifting of A4 shop at Door NO.3-1-53/B, Kolanukonda (V) of Tadepalli Mandal to Door No.1-720/1, Undavalli Centre of Tadepalli Mandal issued by the C P E in his reference 1st cited is hereby stayed until further orders."

I have heard the learned counsel for both the parties and perused the material on record.

Sri E. Manohar, the learned senior counsel, appearing for the writ petitioner, submitted that pursuant to the orders dated 19.8.2006 and 21.8.2006 the petitioner has commenced the business at the new premises at Undavalli centre with effect from 21.8.2006 and, therefore, the 1st respondent has no power or jurisdiction to stay the said proceedings. It is further contended that since the bar licence in Form 2-B and the shop licence under Form A-4 are totally different and are governed by different rules, there is no *lis* between the petitioner and the respondents 5 to 7 and, therefore, the Government ought not to have entertained the Revision Petition at all. Even on merits, it is contended that shifting of the licensed premises permitted by the Commissioner of Prohibition and Excise vide proceedings dated 19.8.2006 was strictly in accordance with Rule

29(3) of the Rules and, therefore, absolutely no case is made out to stay the operation of the same.

On the other hand, Sri E. Madan Mohan Rao, the learned counsel appearing for the respondents 5 to 7, contended that the power under Rule 29(3) of the Rules can be exercised only for valid reasons which must be in consonance with the provisions of the Act. The learned counsel contended that the "business problems" pleaded by the writ petitioner cannot be taken as valid reasons for exercising the power under Rule 29(3) of the Rules. While placing reliance upon the decision of this Court in W.P.No.26597 of 2005 dated 25.4.2006, the learned counsel further contended that the permission granted for shifting the shop to Undavalli centre, which was not notified in the notification dated 27.5.2006, runs contrary to the purport and object of the Rules and, therefore, on that ground also the order dated 19.8.2006 is *ex facie* illegal and was rightly stayed by the Government pending Revision Petition. At any rate, since the Revision Petition is admittedly pending before the Government, the learned counsel contended that W.P.No.18776 of 2006 is premature and is liable to be dismissed *in limini*.

The learned counsel appearing for the petitioner in W.P.No.18027 of 2006 while adopting the arguments of Sri E. Madan Mohan Rao, contended that the order passed by the Commissioner of Prohibition and Excise dated 19.8.2006, on the face of it, being contrary to sub-rule (3) of Rule 29 of the Rules, is arbitrary and illegal.

Rule 29 of the Rules, which provides for shifting of the licensed premises as it stood initially under G.O.Rt.No.998 dated 24.4.2005 runs as under:

29.Sale permitted at the licensed premises only:-

(1) The leaseholder shall sell the liquor only at the premises specified in the licence.

(2) No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere.

(3) Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as may be specified by the Commissioner of Proh. & Excise within the ***same area/locality***

where it was originally established subject to payment of Rs.10,000/- as fee."

Subsequently, by G.O.Ms.No.1878, Revenue (Ex.II) Department, dated 8-11-2005, sub-rule (3) of Rule 29 was substituted as under:

"(3) Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as may be specified by the Commissioner of Prohibition & Excise, subject to payment of Rs.10,000/-."

There was yet another amendment to sub-rule (3) of Rule 29 vide G.O.Ms.No.598 dated 26.5.2006 thereby inserted a provision as under:

"(3) *Shifting of the licensed premises may be permitted for valid reasons within the notified area and subject to conditions as may be specified by the Commissioner subject to payment of one per cent of the lese amount or Rs.25,000/- whichever is higher;*

Provided that the Commissioner may consider and permit for valid reasons shifting of the licensed premises, notwithstanding the notified area of the licensed premises, within the same Mandal or Municipality or Municipal Corporation, without affecting the total number of notified shops in the said Mandal or Municipality or Municipal Corporation subject to condition as specified by the Commissioner and subject to payment of one percent of lease amount or Rs.25,000/- whichever is higher".

Thus, as per sub-rule (3) of Rule 29, as it stands with effect from 26.5.2006, the Commissioner is competent to consider and permit shifting of the licensed premises for valid reasons without regard to the notified area of the licensed premises. However, shifting shall be within the same Mandal or Municipality or Municipal Corporation without affecting the total number of notified shops in the said Mandal or Municipality or Municipal Corporation.

The validity of Rule 29(3) of the Rules, as amended by G.O.Ms.No.1878 dated 8.11.2005 was questioned in W.P.No.26957 of 2005 contending that the same was *ultra vires* the legislative competence of the State under Section 72 of the A.P. Excise Act, 1968 (for short "the Act"). It was contended that the impugned Rule conferred unguided and unfettered power on the Commissioner to

permit shifting of retail shop, which would amount to taking away the vested right of existing retail licensees. This Court having considered all the relevant aspects, though declined to hold that Rule 29 (3) was *ultra vires* the legislative power under Section 72 of the Act, and that unguided powers were conferred on the Commissioner of Prohibition and Excise, held that on a combined reading of Rules 3, 4 and 5 of the Rules, lease of right to sell liquor by shop by way of public auction can be granted only in respect of shops fixed by the Commissioner of Prohibition and Excise in the particular area/locality identified by him in the notification and, therefore, the power conferred under sub-rule (3) of Rule 29 cannot be interpreted as empowering the Commissioner to permit shifting of the shop to a locality/area other than that was identified by the Commissioner in the notification. It was also held as under:

> "The deletion of the words '**within the same area/locality where it was originally established**' by itself did not render the power conferred on the Commissioner of Prohibition & Excise, arbitrary or unguided. However, in a given case if the authority is found to have exercised his discretion contrary to the scheme enunciated under Rules 3, 4 and 5 of the Rules, such decision can be struck down as arbitrary and illegal."

It is to be noted that subsequent to the said order in W.P.No.26957 of 2005, sub-rule (3) of Rule 29 of the Rules was amended by G.O.Ms.No.598 dated 26.5.2006 inserting the proviso, which was extracted above. As already noted, the proviso empowers the Commissioner to permit shifting of the licensed premises within the same Mandal or Municipality or Municipal Corporation notwithstanding the notified area of the licensed premises. The said amendment came into force w.e.f. 26.5.2006, whereas the notification inviting tenders for auction of grant of lease by shop under Rule 5 of the Rules was issued subsequently on 27.5.2006. Hence, all the participants in the auction, including the petitioner in W.P.No.18027 of 2006, are bound by the amended rule and having participated in the auction without raising any objection, it is not open to them now to contend that the shifting of

the shop to Undavalli centre would affect their business on the ground that it was not notified initially. So long as shifting is not effected within the Mandal or Municipality or Municipal Corporation and is not in violation of the other conditions specified under the proviso to rule 29(3), the petitioner in W.P.No.18027 of 2006 cannot make out any grievance. It is also relevant to note that the validity of Rule 29(3), as amended by G.O.Ms.No.598 dated 26.5.2006, is not under challenge in W.P.No.18027 of 2006, but only the order dated 19.8.2006 passed in exercise of the power under Rule 29(3) is sought to be declared as arbitrary and illegal. Having regard to the power conferred under Rule 29(3) as it stood by the date of notification dated 27.5.2006, I am unable to hold that the order dated 19.8.2006, impugned in W.P.No.18027 of 2006, is arbitrary or illegal on any of the grounds urged in the said Writ Petition.

It is also relevant to note that the petitioner in W.P.No.18027 of 2006 is a licensee in Krishna district and, therefore, as rightly contended by the learned senior counsel – Sri E. Manohar, he has no *locus standi* to file the writ petition questioning the shifting of the A-4 shop notified in Guntur district. Hence, the said Writ Petition is liable to be dismissed on that ground also.

So far as W.P.No.18776 of 2006 is concerned, the order impugned is an interim order of stay passed by the 1st respondent pending the Revision Petition preferred by the respondents 5 to 7 herein. Admittedly the said Revision Petition is preferred against the very same order dated 19.8.2006, which is the subject matter of W.P.No.18027 of 2006. The challenge to the order dated 19.8.2006 in the Revision filed before the 1st respondent is on the same grounds, which are found to be untenable for the reasons stated above. In the circumstances, virtually the Revision Petition before the 1st respondent has become infructuous. It is also noted from the material placed before this Court that the said Revision Petition was not presented in accordance with the provisions of the A.P. Excise (Appeal and

Revision) Rules, 1969. As per Rule 7(1) of the said Rules, such Revision is liable to be summarily rejected. Hence, not only the order dated 1.9.2006 is set aside, but the proceedings relating to the Revision Petition pending on the file of the 1st respondent being contrary to law are also hereby quashed.

In the result, W.P.No.18027 of 2006 is dismissed and W.P.No.18776 of 2006 is allowed. There shall be no order as to costs.

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(G. ROHINI, J.

27th October, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.18027 & 18776 OF 2006

October, 2006.

WRIT PETITION No.18027 of 2006:

Between:

Lanka Krishna Mohan. .. Petitioner.

And

The Commissioner of Prohibition and Excise,
Government of Andhra Pradesh, at Hyderabad
And others. .. Respondents.

WRIT PETITION No.18776 of 2006:

Between:

Guntaka Nagi Reddy. .. Petitioner.

And

Government of Andhra Pradesh,
represented by the Principal Secretary
to Government, Revenue (Ex.III)
Department, Secretariat, Hyderabad
and others. .. Respondents.